

REMARKS

Applicant has carefully reviewed and considered the Office Action mailed on August 14, 2003, and the references cited therewith. Claims 12-13 and 15-17 have been amended.

Applicant respectfully submits that such amendments are not narrowing and are not related to patentability. Claims 1-77 and 186-189 are pending in this application.

§103 Rejection of the Claims

Claims 1-17, 19-25, 27-32, 34-36, 38-44, 50-77, and 185-189 were rejected under 35 USC § 103(a) as being unpatentable over Havemann et al. (U.S. 6,358,849 B1) in view of Brown et al. (U.S. 6,168,704 B1). Claims 18, 26, 33, and 37 were rejected under 35 USC § 103(a) as being unpatentable over Havemann et al. (U.S. 6,358,849 B1) in view of Brown et al. (U.S. 6,168,704 B1) as applied to claims 1-17, 19-25, 27-32, 34-36, 38-44, 50-77, and 185-189 above, and further in view of Ting et al. Applicant respectfully traverses the rejections.

The Office Action fails to state a prima facie case of obviousness with respect to claims 1-17, 19-25, 27-32, 34-36, 38-44, 50-77, and 185-189. Havemann et al. is an improper reference. Although rejected under 35 USC § 103(a), the Havemann is being attempted to be applied as a reference under 35 USC § 102(e). However, Havemann is not a valid reference under section (e) or any other section of 35 USC § 102. Applicant's priority filing date is March 1, 1999. Havemann et al. has a filing date of December 21, 1999. Applicant's priority filing date of March 1, 1999 predates the Havemann et al. filing date of December 21, 1999, so Havemann et al. is not a proper reference.

Because Havemann cannot be relied upon, the references when combined do not teach or suggest all the claim limitations. Therefore, the Office Action fails to state a prima facie case of obviousness with respect to claims 1-17, 19-25, 27-32, 34-36, 38-44, 50-77, and 185-189. Therefore, Applicant requests withdrawal of the rejections and reconsideration and allowance of claims 1-17, 19-25, 27-32, 34-36, 38-44, 50-77, and 185-189.

The Examiner may not rely on the filing date of provisional application 60/068,661 filed on December 23, 1997, for priority, because Havemann was filed more than one year from this filing date. If the Examiner intended to rely on provisional application 60/114,039 filed on December 29, 1998, Applicant respectfully submits that it cannot be presumed that the

December 29, 1998 provisional application has all or even any of the description provided in Havemann et al. and relied upon by the Office Action for the rejection.

If the Examiner believes that provisional application 60/114,039 filed December 29, 1998 supports the rejection, Applicant respectfully requests that the Examiner reject the claims based on such reference. Applicant reserves the right to answer the specific rejections based on the actual provisional reference rather than hypothetical assertions based on an issued patent which has a date too late to be used as a reference. Further, Applicant reserves the right, as provided for under 37 C.F.R. 1.131, to swear behind provisional application 60/114,039 filed on December 29, 1998. With regard to the other cited references, Applicant does not admit that such references are prior art and reserves the right to "swear behind" each of these references as provided under 37 C.F.R. 1.131.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612-371-2103) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743

Respectfully submitted,

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Date 17/14/03

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 14th day of November, 2003.

Name

Amy Moriarty

Signature

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